No. 87-363

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

FEDERAL ENERGY REGULATORY COMMISSION,
Petitioner,

v.

MARTIN EXPLORATION MANAGEMENT COMPANY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION OF INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*

JOHN H. CHEATHAM, III
Counsel of Record
EDWARD B. MYERS

1660 L Street, N.W.
Washington, D.C. 20036
(202) 293-5770

Attorneys for Interstate Natural Gas Association of America

September 21, 1987

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INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

1987 ACTIVE MEMBERSHIP

AlaTenn Resources, Inc.
Arkla, Inc.
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Columbia Gas Transmission Corp.
Consolidated Natural Gas Company
El Paso Natural Gas Company
Enron Corp.
Granite State Gas Transmission, Inc.
Great Lakes Gas Transmission Company
Kentucky West Virginia Gas
KN Energy, Inc.
Michigan Gas Storage Company
MidCon Corp.
Mountain Fuel Resources, Inc.
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Panhandle Eastern Corporation
SONAT, Inc.
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Phillips Petroleum Company
Shell Oil Company
Southern California Gas Company
Sun Exploration & Production Company
Texaco U.S.A.
Union Pacific Resources Company
Unocal Corporation

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MOTION OF INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR *CERTIORARI*

The Interstate Natural Gas Association of America ("INGAA")[1] hereby moves for leave to file the accompanying brief *amicus curiae* in the captioned matter. This motion is being filed in compliance with the Court's Rule 36. As of the date this motion is being sent to be printed, counsel for six parties out of the 38 party-respondents listed in the petition for *certiorari* herein have declined to consent

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[1] INGAA'S member companies are listed, *supra*.

to INGAA's filing of a brief *amicus curiae*. All of the objecting parties are gas producers. No other objections have been received although all respondents were contacted in writing.[2]

INTEREST OF THE *AMICUS CURIAE*

INGAA is a nonprofit national association representing virtually all of the major interstate natural gas transmission companies operating in the United States. INGAA's members account for over 90% of all natural gas transported and sold for resale in interstate commerce, and they are subject to the jurisdiction of the Commission under various provisions of the Natural Gas Act ("NGA"), 15 U.S.C. §§717, *et seq.*; the Department of Energy Organization Act, 42 U.S.C. §§7101, *et seq.*; and the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. §§3301, *et seq.*

INGAA is filing this brief in support of the request of the Petitioner, the Federal Energy Regulatory Commission ("Commission"), for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Tenth Circuit ("Tenth Circuit") in *Martin Exploration Management Company, et al.* v. *Federal Energy Regulatory Commission*, 813 F.2d 1059 (Nos. 84-2756, *et al.*, 10th Cir., decided March 9, 1987, as modified on May 1, 1987). App. 1a.[3]

This case involves Commission rules relating to gas which is qualified in both a regulated and a price-deregulated category under the NGPA.[4] The Commission held that the express deregulation provisions in NGPA Section

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[2] Copies of such responses as have been received have been lodged with the Clerk of this Court.

[3] App. refers to the Appendices to the Commission's Petition for a Writ of Certiorari filed herein on August 31, 1987.

[4] 15 U.S.C. §§3301, et seq.

121 require that such dual-category gas be treated as deregulated.

On review, the Tenth Circuit conceded the reasonableness of the Commission's interpretation of Section 121 as such, but it held that NGPA Section 101(b)(5) *requires* a result contrary to that adopted by the Commission. According to the Tenth Circuit, Section 101(b)(5) *mandates* that dually-qualified (regulated/deregulated) gas shall forever be in a state of price instability, with the price alternately flip-flopping between a regulated and a deregulated status, depending on which category will, under the applicable contract provisions and market conditions prevailing at any given moment, produce the highest actual price.

The decision of the Tenth Circuit results in substantial prejudice to interstate pipelines. An INGAA survey, based on responses by 20 pipelines representing 78 percent of the interstate market, shows that the application of the Tenth Circuit's decision during the period 1985-87 could have increased total gas costs by $300 million (roughly $100 million during each of the three years) and would have increased the pipelines' aggregate take-or-pay exposure by $187 million. The $100 million in higher annual gas costs will in future periods be passed on to ultimate consumers by virtue of NGPA Section 601(c)(2), providing for guaranteed passthrough of NGPA determined prices.

Unless reversed by this Court, the decision of the Tenth Circuit will deprive pipelines of substantial revenues that, ultimately, gas consumers will be required to pay to independent producers of gas. The Commission's interest in this matter, while substantial, is nevertheless statutory, and its interest in the outcome is that of a regulator which is not subject to competitive impacts flowing from the Tenth Circuit's decision. On the other hand, INGAA's pipeline members have a direct economic interest. The Tenth Circuit's decision adversely affects the ability of INGAA'S

pipeline members to compete, and it exacerbates the very serious and well-known marketing problems which INGAA's pipeline members are confronting. The participation of INGAA as *amicus curiae* will thus provide this Court with the views of the gas industry's pipeline segment. Accordingly, INGAA's participation will broaden the Court's perspective as to the importance of this case to the national interest.

The parties opposing INGAA's request for consent to file its brief amicus curiae are independent producers of natural gas. Naturally, those producers desire to preserve their "victory" and cut off the opportunity for adverse parties to present opposing insights. However, this is not a private lawsuit nor an occasion for spoils to be preserved for a victor. The Court's rule requiring consent of other parties should not be available for the objecting producers' parochial interests in cases of great *public* significance such as the case at bar.

Furthermore, prior decisions of this Court, such as the *Mid-Louisiana*[5] and *Transco*[6] cases, amply attest to the complexity of the NGPA and the difficulties in determining the intent of Congress in enacting it. For this reason as well, this Court should not foreclose participation by the major industry segment of interstate pipelines represented by INGAA.

Finally, no party can reasonably claim prejudice as a result of INGAA's participation here. The Commission's orders, which were reversed by the Tenth Circuit, were generic rulemaking orders issued in the light of comments filed by representatives of the entire gas industry—producers, pipelines, and distributors. Thus, there is no opportunity for INGAA's arguments to prejudice those private interests who would cut off public debate.

[5] *Public Service Commission of the State of New York* v. *Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983).

[6] *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Mississippi*, ___ U.S. ___, 106 S. Ct. 709 (1986).

WHEREFORE, for the reasons stated above, INGAA respectfully prays that this motion be granted and that this Court receive the attached brief *amicus curiae* for filing.

Respectfully submitted,

JOHN H. CHEATHAM, III
Counsel of Record
EDWARD B. MYERS

Attorneys for
Interstate Natural
Gas Association of
America

September 21, 1987

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BRIEF OF INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*

The Interstate Natural Gas Association of America ("INGAA"), in accordance with this Court's Rule 36, has received the written consent of several of the parties to file this brief as *amicus curiae*, and copies have been filed with the Clerk.[1]

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[1] The industry-wide importance of this case is indicated by the fact that, as shown by petition for *certiorari* filed herein by the Federal Energy Regulatory Commission, there are some 38

INGAA is filing this brief in support of the Petitioner, the Federal Energy Regulatory Commission ("Commission"). For reasons appearing below, INGAA prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Tenth Circuit ("Tenth Circuit") in *Martin Exploration Management Company, et al.* v. *Federal Energy Regulatory Commission*, 813 F.2d 1059 (Nos. 84-2756, *et al.*, 10th Cir., decided March 9, 1987, as modified on May 1, 1987). App. 1a.[2]

INTEREST OF THE *AMICUS CURIAE*

INGAA is a nonprofit national association whose members represent virtually all of the major interstate natural gas transmission companies operating in the United States. INGAA's members account for over 90% of all natural gas transported and sold for resale in interstate commerce, and they are subject to the jurisdiction of the Commission under various provisions of the Natural Gas Act ("NGA"), 15 U.S.C. §§717, *et seq.*; the Department of Energy Organization Act, 42 U.S.C. §§7101, *et seq.*; and the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. §§3301, *et seq*. The decision of the Tenth Circuit results in substantial prejudice to interstate pipelines and ultimate consumers of natural gas.[3]

party-respondents, one of which is INGAA (representing many interstate pipelines). Certain gas producers, who also are respondents herein, have opposed INGAA's request to file this brief *amicus* (see INGAA's motion for leave to file this brief *amicus*, attached, *supra*).

[2] App. refers to the Appendices to the Commission's Petition for a Writ of Certiorari filed herein on August 31, 1987.

[3] An INGAA survey, based on responses by 20 pipelines representing 78 percent of the interstate market, shows that the application of the Tenth Circuit's decision during the period 1985-87 could have increased total gas costs by $300 million (roughly $100 million during each of the three years) and would have increased the pipelines' aggregate take-or-pay exposure by $187 million. The $100 million in higher annual gas costs will be passed on to ultimate consumers by virtue of NGPA Section 601(c)(2), providing for guaranteed pass through of NGPA determined prices.

ARGUMENTS IN SUPPORT OF PETITION

This case involves Commission rules relating to gas which is qualified in more than one NGPA category, where one of those categories is deregulated under NGPA Section 121. The Commission, applying Section 121 of the NGPA, held that the deregulation provisions in that section mandate that such dual-category gas must be treated as deregulated under the statute.[4] The Commission's orders thus implement NGPA Section 121 which states that "the provisions of subtitle A respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall . . . cease to apply effective January 1, 1985."

On review, the Tenth Circuit conceded the reasonableness of the Commission's interpretation of Section 121 as such, but it held that Section 101(b)(5) *requires* a result contrary to that adopted by the Commission. Specifically, the Tenth Circuit held:

> We conclude that §121 is ambiguous. Therefore, in the absence of another provision in the statute, FERC's determination that dual category gas is to be considered

[4] "Deregulation appears to be mandatory. Producers cannot opt out of the statutory scheme on January 1, 1985, merely because market conditions are unfavorable." App. 76a.

> deregulated would be a reasonable interpretation of the ambiguous language of §121. But Congress has anticipated precisely this question in §101(b)(5). [813 F.2d 1066.]

The Tenth Circuit thus substituted its own interpretation of the statute for that of the Commission. According to the Tenth Circuit, Section 101(b)(5) *mandates* that dually qualified (regulated/deregulated) gas shall forever be in a state of price instability, with the price alternately flip-flopping between a regulated and a deregulated status, depending on which category will, under the applicable contract provisions and market conditions prevailing at any given moment, produce the highest actual price.

Oddly, the Tenth Circuit imposed its own views even though it *twice* conceded that its interpretation produces anomalous results which were unanticipated and unintended by Congress. 813 F.2d at 1068 n. 11, and 1071. The interpretation of the Tenth Circuit is particularly suspect not only because it rests on a tenaciously-held interpretation of a *single word* in Section 101(b)(5), *i.e.*, the word "could", but also because it perverts a statutory scheme for *deregulation* into a closely regulated *price support* program.[5]

I. The Tenth Circuit's Decision Is Inconsistent with the Plain Meaning of the Statute.

The Commission reasonably and correctly refused to read Section 101(b),(5) in a manner which would extend *regulation* of producer prices when those prices

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[5] In addition, the Tenth Circuit disagreed with the Commission's conclusion that gas which is determined to qualify as new tight formation gas (Section 107(c)(5)) is also implicitly deemed to qualify as either Section 102(c) or 103 gas.

would otherwise be *deregulated* consistent with Congress' overall deregulation objective reflected in NGPA Section 121.[6] It concluded that the statutory language in Section 101(b)(5)—stating that the NGPA category which "could" result in the highest price shall be applicable—is a reference to the deregulated price where dually-qualified (regulated/deregulated) gas is in question.[7] It did so in light of the mandate of Section 121 of the NGPA to move toward deregulation and because there always exists at least the potential for the parties to negotiate a (deregulated) contract price above the old regulated ceiling price. App. 79a.[8]

Contrary to the claim of the Tenth Circuit, Section 101(b)(5) does not reflect an unambiguous congressional intent which requires the rejection of the inter-

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[6] As this Court explained previously in its *Mid-La II* opinion:

> For some categories of gas, the NGPA ceiling prices are an intermediate step on the path from a fully regulated industry to a deregulated industry. Sections 121 and 122 of the NGPA provide a mechanism for the ultimate decontrol of a number of categories of natural gas.

Public Service Commission of the State of New York v. *Mid-Louisiana Gas Co.*, 463 U.S. 319, 336 n. 14 (1983).

[7] The Commission had explained, preliminarily, that a producer would have to qualify its gas—even if it were deregulated—before it could engage in a "first-sale" of that gas. App. 65a-66a.

[8] Thus, the Commission's action is consistent with established rules of statutory interpretation holding that the "intention prevails over the letter, and the letter must if possible be read so as to conform to the spirit of the Act." 2A *Sutherland Statutory Construction*, §46.07, at 65 (4th ed. 1973).

pretation adopted by the Commission.[9] The crux of the Tenth Circuit's error lies in its declaration, which is unsupported and patently not supportable, that the Commission's interpretation of the word "* * * 'could'—one that considers only the theoretical possibilities—renders §101(b)(5) meaningless." 813 F.2d at 1068. The Tenth Circuit's error was its failure to follow well-established principles of statutory construction in its analysis of the provision at issue here. Unless otherwise indicated, words should be given "their ordinary, contemporary, and common meaning." *Perrin* v. *United States*, 444 U.S. 37, 42 (1979)(citations omitted). The ordinary meaning of the word "could" connotes a level of uncertainty or possibility.[10] The Commission, consistent with that connotation, held that, as a matter of simple logic, deregulated gas, which is subject to no price ceiling, *could* always be priced higher than gas which remains subject to a price cap, regardless of how high a level to which that cap may rise under the provisions of the NGPA.[11] That is, the Commission read the term "could" as referring, not to actual prices, as the Tenth Circuit held, but only to the legally permissible prices.

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[9] "* * * We reverse and remand because FERC's interpretation is contrary to the clear intent of Congress as expressed in the unambiguous language of the NGPA." 813 F.2d at 1065.

[10] For example, *Webster's Third New International Dictionary*, unabridged version, defines the word as "used in auxiliary function in the past tense . . . , in the past conditional . . . , and as an alternative to can suggesting less force or certainty . . . ."

[11] Quoted *supra*. Indeed, as noted earlier, that was a general pattern in the pre-NGPA era when price escalation provisions in producer contracts would have permitted wellhead prices exceeding NGA just and reasonable levels.

The Commission concluded that gas which is not limited by a price ceiling always has the potential to be higher than a regulated price.

Clearly, the Commission's reading of the word "could" is not meaningless and does not render Section 101(b)(5) meaningless. It is an interpretation which is consistent with the statutory intent. It is the very sort of interpretation to which the courts are bound to give deference.[12] Indeed, the deference to be accorded to an agency's interpretation is strongest where the agency is carrying out its congressionally-imposed mandate:

> * * * We have elsewhere held that we may not, 'in the absence of compelling evidence that such was Congress' intent . . . prohibit administrative action imperative for the achievement of an agency's ultimate purposes.' Permian Basin Area Rate Cases, 390 U.S. 747, 780.[13]

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[12] For example, in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 483 (1984) ("*Chevron*"), this Court explained that a court is not free to adopt its own interpretation in place of the one chosen by the agency. Rather, if the agency's

> ' * * * choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, [a court] should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.' *United States* v. *Shimmer*, 367 U.S. 374, 383 * * * (1961).

[13] *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (additional citations omitted).

The Commission's action here is in furtherance of its duty to carry out Congress' statutory scheme of deregulation and there is no "compelling evidence" that Congress intended Section 101(b)(5) to be read in a manner that would thwart that goal.

In contrast to the Commission's rational and reasoned interpretation, the Tenth Circuit's artificial interpretation, which requires an actual price comparison at a particular moment in time, does violence to the language of the statute. The Tenth Circuit's view requires reading Section 101(b)(5) as if the word "could" were replaced by "would" or "will." Such a reading is plainly unreasonable.[14] Thus, on the basis of an analysis of the statutory language itself, the Tenth Circuit's interpretation must fail.

II. The Tenth Circuit's Interpretation Is Inconsistent with the Purpose and History of the NGPA.

The reasonableness of the Commission's interpretation is also clear against the backdrop of the NGPA. Although pricing provisions in producer contracts generally provided for escalations in prices, the Commission (Federal Power Commission) had been constrained under the NGA's "just and reasonable" standard to limit such prices to cost-based levels, even though those price levels tended to be below the prices dictated by the market.[15] The Commission's inability

[14] As this Court has said, "[n]ormal principles of statutory construction require that we give effect to the subtleties of language that Congress chose to employ . . . ." *Offshore Logistics, Inc.* v. *Tellentire*, 477 U.S. ___, ___, 91 L.Ed.2d 174, 189 (1986).

[15] *See, Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 391-93 (1959).

to provide adequate wellhead price incentives above the cost-based just and reasonable standard of the NGA frustrated producer efforts to explore for and develop incremental gas supplies for interstate pipelines. Gas supplies were therefore naturally attracted to the unregulated intrastate markets and a severe gas shortage in the interstate market ensued during the 1970's.[16] Congress, through the NGPA, replaced the NGA's cost-based "just and reasonable" standard for gas producers "with a precise schedule of [higher] price ceilings."[17] However, pending implementation of the NGPA's phased deregulation scheme, "first-sale" prices were permitted to rise only to the level of those price *ceilings* if contracts would permit.

Thus the NGPA price ceilings were not intended to increase the price for "first-sales" above market determined levels specified in producer contracts, *i.e.*, the NGPA price ceilings were not intended to be price *floors*. Rather, the ceilings were prescribed as upper limits upon the prices that would result from the unfettered operation of supply-demand forces.[18] The Commission's reading gives full sway to this acknowledged congressional intent.

In defending its position, the Tenth Circuit insists that the Commission:

> * * * has confused the ultimate purpose of the statute—'to assure adequate supplies of

[16] See *Mid-La II*, *supra*, 463 U.S. at 330-31 ("The interstate rates remained substantially below the unregulated prices available for intrastate sales, and the interstate supply remained inadequate.").

[17] *Id.* at 334.

[18] *Id.* at 336, fn. 14, quoted *supra*.

> natural gas at fair prices,' *Transcontinental Gas Pipe Line Corp.*, 106 S.Ct. at 716—with one of several means chosen to accomplish that purpose—phased deregulation. * * * Incentive prices for difficult to produce gas are another means by which Congress sought to increase energy supplies. * * * We will not strain the plain meaning of §101(b)(5) in order to serve a goal of deregulation that is itself only one of several means adopted to achieve the purposes of the NGPA. [813 F.2d at 1070-71 (footnote omitted)].

A basic error in the Tenth Circuit's reasoning is its failure to appreciate the nature of the "incentive" under the NGPA. While it is true that this Court and other courts have referred to the fact that the NGPA is designed to create incentives for the production of natural gas, it is clear that those incentives do not take the form of higher prices *imposed* on the market. On the contrary, the incentives were found in *ceiling* prices applicable when contracts permitted, and the incentives for new gas were significantly higher than levels permissible under the NGA's cost-based just and reasonable standard.

Thus, the new NGPA ceilings clearly contemplated that *if the market forces would support such a high price* the seller would be allowed to charge a price up to the ceiling level if the sales contract permitted. This fact is made very clear in Section 101(b)(9) which provides that, regardless of whether gas is regulated or deregulated, the price charged cannot exceed the contract price, even if that price is well below the allowable ceiling price.

This Court noted in *Mid-La II*, 463 U.S. at 339, that "the Conference Committee admonishes that 'maximum lawful prices are ceiling prices only. In no case may a seller receive a higher price than his contract permits.' HR Conf. Rep. No. 75-1752, p. 74 (1978)." A similar point of view was expressed by Congressman Dingell who said that:

> The rule set forth in section 101(b)(9) is that the legislation establishes *ceiling* prices. Contract prices may be lower than the federal maximum lawful price. In such cases the contractual arrangement between the parties continues to govern their relationship and is not superseded by the federal ceiling price.[19]

The Tenth Circuit's interpretation, however, does not allow the NGPA prices to operate as ceilings.

Furthermore, the Tenth Circuit is wrong when it implies that incentive prices and deregulation are two different means used to achieve the goal of the statute. The two divergent forces to which the Tenth Circuit makes reference, *id.* at 1070, citing *Mid-La II*, were those favoring a relatively brief transition to deregulation and those favoring simply an increase in the allowable, regulated ceiling price.[20] The com-

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[19] *Natural Gas Policy Act Information Service*, ¶101:230, p. 2 (emphasis in original).

[20] "The House bill proposed a 'single uniform price policy for natural gas produced in the United States.' HR Rep No. 95-496, pt 4, p 96 (1977). * * * The Senate bill . . . would have maintained Natural Gas Act regulation for all gas sold or delivered in interstate commerce before January 1, 1977, and steadily cut back on Commission jurisdiction so that all natural gas sold after January 1, 1982, would have been completely deregulated." *Mid-La II*, 463 U.S. at 331.

promise was the NGPA which, pending eventual deregulation, subjects virtually all new gas to market force pricing.

It is simply absurd for the Tenth Circuit to suggest that to achieve its goal of assuring adequate gas supplies at *fair* prices,[21] Congress intended to force the price of gas above the levels dictated by the market forces of supply and demand.[22] Indeed, the Tenth Circuit candidly admits that its interpretation produces an

> * * * anomalous situation [where] . . . producers seek the regulated ceiling price rather than the deregulated market price. * * * Therefore, §101(b),(5) can have the unanticipated effect of operating as a price floor for producers. [813 F.2d at 1071].

It is wholly indefensible for the Tenth Circuit to claim that its decision is consistent with the goals of the NGPA when, in fact, it upsets the very core of that statute.

As this Court recently noted, the NGPA reflects "Congress' determination that the supply, the demand, and the price of high-cost gas be determined by market forces" and that "[t]o the extent Congress

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[21] *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Mississippi*, ___ U.S. ___, ___, 106 S. Ct. 709, 716 (1986), cited at 813 F.2d 1070.

[22] *See* NGPA Section 123 which requires the Department of Energy to submit two reports to Congress, each evaluating "whether equilibrium exists between supply and demand for natural gas." Equilibrium cannot be achieved unless the market forces are allowed to operate unfettered by artificial price supports.

denied FERC the power to regulate affirmatively particular aspects of the first sale of gas, it did so because it wanted to leave determination of supply and first-sale price to the market." Thus, this Court concluded that the statute was "a comprehensive federal regulatory scheme to give market forces a more significant role in determining the supply, the demand, and the price of natural gas . . . ." *Transcontinental, supra*, 106 S. Ct. 709, 716-17 (1986).

The Commission has sought to give full reign to market forces in its interpretation of the statute. In contrast, the Tenth Circuit would turn the NGPA into a price *support* scheme which would protect producers from downside risks and force gas consumers to pay above-market prices for their gas. Nothing in the language or legislative history of the NGPA supports such a result.

In addition, the Tenth Circuit's view, when carried to its logical conclusion, would require the Commission, as the agency charged with enforcing the provisions of the NGPA, to examine each contract to determine what price would apply if the gas in question is dually-qualified. And, if the contract should require the parties to renegotiate the contract price, the Commission, in order to determine which of the two prices is higher, would have to wait until after the parties attempt to renegotiate the contract price before it could determine whether the gas should be treated as regulated or deregulated. Such an undertaking would have to be made on a monthly or even more frequent basis as ceiling prices and market conditions changed.

Congress did not intend to require the Commission to become bogged down in matters of contract inter-

pretation. This is evident in light of the NGPA's legislative history. As Congressman Dingell stated:

> The FERC is intended to play an enforcement role with respect to the ceiling prices, not with respect to enforcement of private contracts *per se*. . . . [I]t is contemplated that FERC's implementation of the bill will be accomplished with minimal interference with contractual relationships.[23]

The Commission's interpretation of Section 101(b)(5) conforms with this view because it would not place the burden of interpreting contracts on the Commission. In contrast, the Tenth Circuit would use a statutory scheme for *deregulation* to justify an *expansion* of the Commission's regulatory oversight to include the interpretation and enforcement of private contracts.

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[23] *Natural Gas Policy Act Information Service*, ¶101:230, p. 3.

CONCLUSION

For the foregoing reasons, INGAA urges this Court to grant *certiorari* to correct the serious errors committed by the Tenth Circuit and to insure that the NGPA is allowed to operate as intended by Congress. Unless corrected, such errors will impose substantial injury upon interstate pipelines and gas consumers.

Respectfully submitted,

JOHN H. CHEATHAM, III
Counsel of Record
EDWARD B. MYERS

Attorneys for
Interstate Natural
Gas Association of
America

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